

22 MAR 2006



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In re Application of :
NUNN, Peter :
Application No.: 10/521,690 : DECISION
PCT No.: PCT/CA03/01032 :
Int. Filing Date: 17 July 2003 : ON PETITION UNDER
Priority Date: 17 July 2002 :
Docket No.: 2600.2.33 : 37 CFR 1.10(c)
For: WATER TREATMENT DEVICE ... AND :
RE-RESONATING WATER :
:

This decision is in response to applicant's "Request for Corrected Filing Date," filed in the United States Patent and Trademark Office on 13 October 2005. It has been treated as a petition under 37 CFR 1.10(c).

BACKGROUND

On 17 July 2003, applicant filed international application PCT/CA03/01032, which claimed a priority date of 17 July 2002. A copy of the international application was transmitted to the United States Patent and Trademark Office from the International Bureau (IB) on 22 January 2004. The thirty month period for paying the basic national fee expired at midnight on 17 January 2005.

Applicant filed a transmittal letter for entry into the national stage in the United States, accompanied by, *inter alia*, the basic national fee. It was accorded a receipt date of 18 January 2005.

On 03 October 2005, the Office mailed a Notification of Acceptance (Form PCT/DO/EO/903) and a Filing Receipt indicating that the requirements under 35 U.S.C. 371 were satisfied on 18 January 2005.

On 13 October 2005, applicant filed the instant petition under 37 CFR 1.10(c).

DISCUSSION

In the instant petition, applicant requests that the receipt date of application No. 10/521,690 be amended to 14 January 2005. The requirements for a petition to correct a receipt date based on Express Mail records are set forth in 37 CFR 1.10(c). The section states as follows:

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Director to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Items (1), (2) and (3) have been met. The petition was filed promptly. The Express Mail mailing label number was listed on the correspondence. Applicant has provided a copy of the Express Mailing mailing label with the "date-in" listed as 14 January 2005.

A review of the declaration of inventorship filed during the international phase reveals it does not comply with requirements. Applicants supplied the declaration under 4.17 after the initial filing, under PCT Rule 26ter. A declaration supplied under PCT Rule 26ter, must identify the international application number to which it is directed. Applicants used the declaration form for a declaration that formed a part of the original filing. It does not list the international application number. As such applicants have not supplied a declaration in compliance with 37 CFR 1.497(a)-(b) and have not fulfilled the requirements under 35 U.S.C. §371(c)(1), (c)(2) and (c)(4).

CONCLUSION

For the reasons listed above, applicant's petition under 37 CFR 1.10(c) to correct the receipt date of the filing to 14 January 2005 is **GRANTED**.

The Notification of Acceptance (Form PCT/DO/EO/903) and Filing Receipt mailed 03 October 2005 are **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for continued processing in accordance with this decision, including the mailing of a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the search fee, examination fee or oath or declaration are required.



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